

Message

From: William Bider [KDHE] [William.Bider@ks.gov]
Sent: 8/14/2018 1:34:00 PM
To: Smith, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f8ca6ba195244bc38b6e649f46632dff-SMITH, JOHN]
CC: Leo Henning [KDHE] [Leo.Henning@ks.gov]; Christine Mennicke [KDHE] [Christine.Mennicke@ks.gov]; Kate Gleeson [KDHE] [Kate.Gleeson@ks.gov]
Subject: RE: "At least as protective"

Thanks John. I believe this information is relevant and potentially helpful.

Clearly, EPA recognized and explained that there is a difference between self-implementing regulations and regulatory programs that rely upon a state regulatory authority and a state permit program. We emphasize these differences in multiple places in the narrative section of our application and we assert that the presence of "guaranteed regulatory oversight" justifies certain areas of regulatory flexibility

We are looking forward to an opportunity to explain this further to EPA headquarters officials.

Bill Bider
Director
Bureau of Waste Management

From: Smith, John [mailto:Smith.John@epa.gov]
Sent: Monday, August 13, 2018 5:19 PM
To: William Bider [KDHE] <William.Bider@ks.gov>
Subject: "At least as protective"

Bill – this is an excerpt from the federal register for the first CCR final rule. Seems like this is the standard in which to judge whether a state implemented CCR program is "as least as protective" as the self-implemented regulations. What do you think?

In an effort to ensure that the proposed RCRA subtitle D requirements would achieve the statutory standard of "no reasonable probability of adverse effects on health and the environment" in the absence of guaranteed regulatory oversight, EPA also proposed to require facilities to obtain third party certifications and to provide enhanced state and public notifications of actions taken to comply with the regulatory requirements. Specifically, EPA proposed that certain technical demonstrations made by the owner or operator be certified by an independent registered professional engineer or hydrologist, in order to provide verification and otherwise ensure that the provisions of the rule were properly applied. EPA also provided a regulatory definition of the term, "independent registered professional engineer or hydrologist," to identify the minimum qualifications necessary to make these certifications. While EPA acknowledged that relying upon a third party certification was not the same as relying upon a state or federal regulatory authority and was not expected to provide the same level of independence as a state permit program, the availability of meaningful third party (i.e., independent) verification provided critical support that the rule would achieve the statutory standard, as it would provide at least

<https://www.federalregister.gov/documents/2015/04/17/2015-00257/hazardous-and-solid-waste-management-system-disposal-of-coal-combustion-residuals-from-electric>

John J. Smith, Deputy Director
Air & Waste Management Division
EPA Region 7
Desk 913-551-7845
Cell 913-645-4672